

FOURTEENTH DAY
(Thursday, February 2, 1995)

The Senate met at 10:30 a.m. pursuant to adjournment and was called to order by Senator Moncrief.

The roll was called and the following Senators were present: Armbrister, Barrientos, Bivins, Brown, Cain, Ellis, Gallegos, Galloway, Harris, Haywood, Henderson, Leedom, Lucio, Luna, Madla, Moncrief, Montford, Nelson, Nixon, Patterson, Ratliff, Rosson, Shapiro, Sibley, Truan, Turner, Wentworth, West, Whitmire, Zaffirini.

Absent-excused: Sims.

A quorum was announced present.

The Reverend Jeryl Hoover, Pastor, Tarrytown Baptist Church, Austin, offered the invocation as follows:

Our Father, we pause at this occasion to give earnest thanks for Your mindfulness toward us in the endeavors of this government. We offer our sincere gratitude for this wonderful state—for the beauty of the earth contained in its borders and the depth of dignity and good-heartedness in its people. May the ladies and gentlemen in this distinguished Senate be attentive to their high calling, and may they honor the trust placed in them by all of Texas' citizens, whether distinguished or obscure, rich or poor, powerful or helpless. May their good intentions conduct them toward wise policy in all things. We ask this in the name of the One who taught us that we are freest when the truth prevails. Amen.

On motion of Senator Leedom and by unanimous consent, the reading of the Journal of the proceedings of yesterday was dispensed with and the Journal was approved.

(President in Chair)

LEAVE OF ABSENCE

On motion of Senator Truan, Senator Sims was granted leave of absence for today on account of illness.

CO-AUTHOR OF SENATE JOINT RESOLUTION 7

On motion of Senator Ellis and by unanimous consent, Senator Zaffirini will be shown as Co-author of S.J.R. 7.

CO-AUTHOR OF SENATE JOINT RESOLUTION 24

On motion of Senator Armbrister and by unanimous consent, Senator Galloway will be shown as Co-author of S.J.R. 24.

CO-AUTHOR OF SENATE BILL 59

On motion of Senator Ellis and by unanimous consent, Senator Zaffirini will be shown as Co-author of S.B. 59.

CO-AUTHORS OF SENATE BILL 95

On motion of Senator West and by unanimous consent, Senators Shapiro and Wentworth will be shown as Co-authors of **S.B. 95**.

CO-AUTHORS OF SENATE BILL 141

On motion of Senator Ellis and by unanimous consent, Senators Barrientos and Whitmire will be shown as Co-authors of **S.B. 141**.

CO-AUTHOR OF SENATE BILL 356

On motion of Senator Sibley and by unanimous consent, Senator Zaffirini will be shown as Co-author of **S.B. 356**.

CO-AUTHOR OF SENATE BILL 358

On motion of Senator Sibley and by unanimous consent, Senator Zaffirini will be shown as Co-author of **S.B. 358**.

CO-AUTHOR OF SENATE BILL 359

On motion of Senator Sibley and by unanimous consent, Senator Zaffirini will be shown as Co-author of **S.B. 359**.

CO-AUTHOR OF SENATE BILL 385

On motion of Senator Ellis and by unanimous consent, Senator Zaffirini will be shown as Co-author of **S.B. 385**.

SENATE BILLS AND RESOLUTIONS ON FIRST READING

The following bills and resolutions were introduced, read first time, and referred to the committees indicated:

S.J.R. 2 by Harris

Administration

Proposing a constitutional amendment relating to appropriations for the preservation and perpetuation of certain items of historical value; allowing the legislature and state agencies to accept on behalf of the state gifts of items of historical value and contributions to purchase such items.

S.J.R. 32 by Brown, Lucio

Finance

Subcommittee on Veteran Affairs

Proposing a constitutional amendment to increase the amount of general obligation bonds authorized for veterans' housing assistance.

S.C.R. 38 by Moncrief

Health and Human Services

Memorializing the Congress of the United States to enact legislation to amend the food stamp program by adding a special provision to allow food stamp workers to reissue food stamp benefits to family members fleeing from domestic violence, regardless of where they seek refuge, provided the families present evidence that they were or are victims of domestic violence.

S.C.R. 41 by Harris

Administration

Granting Tenneco Power Generation Company permission to sue the State of Texas and the chancellor of The Texas A&M University System.

- S.B. 360** by Montford State Affairs
Relating to the continuation and functions of the Texas Commission on the Arts.
- S.B. 388** by Turner Criminal Justice
Relating to the applicability of the open records law to certain incarcerated individuals.
- S.B. 389** by Harris State Affairs
Relating to excavation operations that may damage underground facilities; providing civil penalties.
- S.B. 390** by Harris Jurisprudence
Relating to the disclosure of property valuation information to the owner of property to be acquired for public use.
- S.B. 391** by Harris Economic Development
Relating to recovery from certain insureds of payments made by the Texas Property and Casualty Insurance Guaranty Association.
- S.B. 392** by Turner Finance
Relating to contingency longevity pay for Texas Youth Commission employees in hazardous duty positions.
- S.B. 393** by Nixon Natural Resources
Relating to the definition of a liquefied natural gas system.
- S.B. 394** by Sims Finance
Relating to an exemption from the oil and gas production taxes for certain marginal oil leases remaining in production; providing a civil penalty.
- S.B. 395** by Zaffirini State Affairs
Relating to public access to certain early voting records.
- S.B. 396** by Sims, Brown, Leedom, Nelson, Patterson Natural Resources
Relating to the regulation of petroleum storage tanks.
- S.B. 397** by Ratliff Education
Relating to service areas of community college districts.
- S.B. 398** by Ellis Economic Development
Relating to regulation of check-cashing services; providing a penalty.
- S.B. 399** by Ellis, Ratliff Education
Relating to qualifications of the executive director of the Teacher Retirement System of Texas.
- S.B. 400** by Wentworth Jurisprudence
Relating to the application of the doctrine of forum non conveniens to certain actions.
- S.B. 411** by Montford State Affairs
Relating to the protection of a public employee who reports a violation of law.

S.B. 412 by Patterson Criminal Justice
Relating to the use of state funds or services by certain private entities for the legal representation of an inmate sentenced to death.

S.B. 413 by Brown Economic Development
Relating to workers' compensation insurance coverage for volunteer emergency service members and personnel.

S.B. 414 by Montford State Affairs
Relating to the restricted sale of wine for off-premises consumption by the holder of a winery permit located in certain dry areas.

RESOLUTIONS SIGNED

The President announced the signing of the following enrolled resolutions in the presence of the Senate:

H.C.R. 33	S.C.R. 36
H.C.R. 54	S.C.R. 37
S.C.R. 21	

MESSAGE FROM THE GOVERNOR

The following Message from the Governor was read and was referred to the Committee on Nominations:

Austin, Texas
February 2, 1995

TO THE SENATE OF THE SEVENTY-FOURTH LEGISLATURE,
REGULAR SESSION:

I ask the advice, consent and confirmation of the Senate with respect to the following appointments:

TO BE MEMBERS OF THE STATE BOARD OF DENTAL EXAMINERS,
pursuant to **S.B. 18**, 74th Legislature, Regular Session, for terms to expire February 1, 1997:

JAMES L. BOLTON, D.D.S.
1601 Primrose Lane
Borger, Texas 79007

CORNELIUS O. HENRY, D.D.S.
2301 North Englewood
Tyler, Texas 75702

JAMES W. KENNEDY, D.D.S.
810 Briar Hill
Houston, Texas 77042

GAIL WILKS, R.D.H.
2701 Woodhaven Court
Longview, Texas 75605

H. GRANT LAPPIN
101 Westcott #2004
Houston, Texas 77007-7031

MARSHA WAUGH
1435 Rim Road
El Paso, Texas 79902

TO BE MEMBERS OF THE STATE BOARD OF DENTAL EXAMINERS,
pursuant to S.B. 18, 74th Legislature, Regular Session, for terms to expire
February 1, 1999:

J. HADLEY HALL, D.D.S.
20 Pinehurst
Abilene, Texas 79606

MIRO ARTHUR PAVELKA, D.D.S.
5007 Bellerive Drive
Dallas, Texas 75287-7549

KENT T. STARR, D.D.S.
3825 Herwol
Waco, Texas 76710

FELIPE REYNA
452 Thunder Trail
Lorena, Texas 76655

SHERYL ANN BELTRANE, D.D.S.
25026 Burnt Arrow
San Antonio, Texas 78258

JERRY T. BURLEY
8837 Oak Knoll
Houston, Texas 77078

TO BE MEMBERS OF THE STATE BOARD OF DENTAL EXAMINERS,
pursuant to S.B. 18, 74th Legislature, Regular Session, for terms to expire
February 1, 2001:

PATRICIA STEUART BLACKWELL
3614 Andrews Highway
Midland, Texas 79703

TAMMY R. FISHER, R.D.H.
3017 Richwood Circle
Bedford, Texas 76021

MICHAEL NOGUEIRA
505 Escandon
Rancho Viejo, Texas 78575

JOHN H. PARK, JR., D.D.S.
1500 Shady Creek Drive
Euless, Texas 76040

RONALD G. SMITH, D.D.S.
4711 22nd Street
Lubbock, Texas 79407

JOE DAVID ZAYAS, D.D.S.
617 Escandon
Rancho Viejo, Texas 78575

Respectfully submitted,
/s/George W. Bush
Governor of Texas

CAPITOL PHYSICIAN

Senator Ellis was recognized and presented Dr. Susan Murphey of Houston as the "Doctor for the Day."

The Senate welcomed Dr. Murphey and thanked her for her participation in the "Capitol Physician" program sponsored by the Texas Academy of Family Physicians.

CONCLUSION OF MORNING CALL

The President at 10:41 a.m. announced the conclusion of morning call.

SENATE BILL 286 ON SECOND READING

Senator Brown moved that the regular order of business, Senate Rule 7.13, and Section 5 of Article III of the State Constitution be suspended and that **S.B. 286** be taken up for consideration at this time:

S.B. 286, Relating to persons considered to be a spouse for purposes of the prosecution of sexual assaults.

The motion prevailed by the following vote: Yeas 30, Nays 0.

Absent-excused: Sims.

The bill was read second time and was passed to engrossment by a viva voce vote.

SENATE BILL 286 ON THIRD READING

Senator Brown moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **S.B. 286** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 30, Nays 0.

Absent-excused: Sims.

The bill was read third time and was passed by a viva voce vote.

GUESTS PRESENTED

Senator Montford was recognized and introduced to the Senate interns of the Committee on Finance: Kelly Trish of Senator Montford's office, Denise Hicks of Senator Ratliff's office, and Jason Weiss of Senator Haywood's office.

The Senate welcomed its guests.

GUESTS PRESENTED

Senator Brown, on behalf of Senator Armbrister, was recognized and introduced to the Senate members of Leadership Calhoun County, along with Calhoun County Judge Howard Hartzog and Port Lavaca Mayor Tiney Browning.

The Senate welcomed its guests.

SENATE BILL 285 ON SECOND READING

Senator Brown moved that the regular order of business, Senate Rule 7.13, and Section 5 of Article III of the State Constitution be suspended and that **S.B. 285** be taken up for consideration at this time:

S.B. 285, Relating to the temporary detention of certain persons charged with offenses involving family violence or the offense of stalking.

The motion prevailed by the following vote: Yeas 30, Nays 0.

Absent-excused: Sims.

The bill was read second time and was passed to engrossment by a viva voce vote.

SENATE BILL 285 ON THIRD READING

Senator Brown moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **S.B. 285** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 30, Nays 0.

Absent-excused: Sims.

The bill was read third time and was passed by a viva voce vote.

SENATE BILL 240 ON THIRD READING

Senator Nelson moved that the regular order of business, Senate Rule 7.13, and Section 5 of Article III of the State Constitution be suspended and that **S.B. 240** be placed on its third reading and final passage.

S.B. 240, Relating to the statutory county courts and statutory probate court in Denton County.

The motion prevailed by the following vote: Yeas 26, Nays 4.

Yeas: Armbrister, Barrientos, Bivins, Brown, Cain, Galloway, Harris, Haywood, Henderson, Leedom, Lucio, Luna, Madla, Moncrief, Montford, Nelson, Nixon, Patterson, Ratliff, Rosson, Shapiro, Sibley, Truan, Turner, Wentworth, Zaffirini.

Nays: Ellis, Gallegos, West, Whitmire.

Absent-excused: Sims.

The bill was read third time and was passed by the following vote:
Yeas 24, Nays 6.

Yeas: Armbrister, Bivins, Brown, Cain, Galloway, Harris, Haywood, Henderson, Leedom, Lucio, Madla, Moncrief, Montford, Nelson, Nixon, Patterson, Ratliff, Rosson, Shapiro, Sibley, Truan, Turner, Wentworth, Zaffirini.

Nays: Barrientos, Ellis, Gallegos, Luna, West, Whitmire.

Absent-excused: Sims.

REASON FOR VOTE

Senator Luna submitted the following reason for vote on **S.B. 240**:

I oppose creating any new courts as long as we have a discriminatory judicial selection process. Our judges do not represent the 40 percent of the state's people who are minorities.

I have nothing against my esteemed colleague or Denton County. I agree that it needs another county court to handle the rapid change caused by fast growth.

Urban counties cannot have any new courts until the legislature develops and passes a judicial selection plan that will provide for the election of judges by district. While Denton County's minority population is below the Department of Justice's cutoff, I believe all counties are part of the state; judicial selection is a state issue; and we cannot create courts in some counties and not in the urban counties.

Texas does not have enough minorities on the bench and the current system will not improve the representation. In Harris County alone eight minority judges were voted out of office. Harris County's judiciary is as white today as it was in the early 1970s. That system must change. The only way to force change is to prevent anyone from creating new courts until the selection process is revised.

At Governor Bullock's request I served on the Judicial Selection Committee. We met many times and reached a consensus. I did not support every single part of it but like the other committee members I agreed to support the final product. I believe it will allow change in the racial and ethnic composition of the judiciary. Some in the minority community oppose **S.B. 313** by Senator Ellis and co-authored by most minority Senators and others. But it should be something we can pass. If the Department of Justice accepts it, then we can create new courts where needed instead of just where Justice allows it. The state must have a system that elects a proportionate number of minorities to the state district courts.

LUNA

REASON FOR VOTE

Senator Ellis submitted the following reason for vote on **S.B. 240**:

I am opposed to passage of **S.B. 240** because I believe the Texas Legislature should not create any new courts until it remedies the

discrimination in the current judicial election system. Unfortunately, I am not optimistic that the Legislature will act to resolve this problem without some pressure on the system.

The Justice Department's ability to block the creation of new courts until the system is brought into compliance with the Voting Rights Act has the ability to force the Legislature to respond to the problem. In the absence of such pressure, I am afraid the Legislature would continue to try to sweep this problem under the rug. The passage of so-called "local" bills creating new courts in the context of a discriminatory, immoral system could go on endlessly, as lawmakers push forward their local agendas but neglect the statewide problem.

With all due respect to Senator Nelson and to the people of Denton County—for whom I would willingly support the creation of a new court in the context of a fair judicial election system—I strongly oppose **S.B. 240**.

ELLIS

REASON FOR VOTE

Senator West submitted the following reason for vote on **S.B. 240**:

Members, I oppose the creation of ANY new courts in Texas—as long as we have a statewide system of electing judges that in my judgement is unconstitutional and denies minorities an opportunity to elect judges of their choice. The current system is designed in such a manner that minorities have little or no voice in electing judges on a countywide basis. This practice, if allowed to continue, will further segregate the judiciary. Members, I can appreciate the problem the crowded dockets are causing in Denton County. But other counties in this state have crowded dockets and need additional courts. Urban counties need them perhaps more than Denton County. While Denton County's minority population may allow pre-clearance for a new court (and we can only speculate at this point), the issue of how we elect judges in Texas is not just a county-by-county issue. It is a statewide issue and I believe we must not be selective about where we allow new courts to be created this session until we address this issue for the whole state.

We all know that our judiciary is not representative of the ethnic demographics in our state. Creating new courts until this issue is resolved is only going to exacerbate the problem.

WEST

REASON FOR VOTE

Senator Gallegos submitted the following reason for vote on **S.B. 240**:

Until the Legislature responds with some urgency to remedying the current judicial election system, I am opposed to **S.B. 240**. The Justice Department has made it clear that it is refusing to pre-clear new elected courts until the system is brought into compliance with the Voting Rights Act.

As a State Senator for a majority Hispanic constituency that must work within a discriminatory judicial system, passing bills that create new courts, without addressing the statewide selection problem, diminishes the seriousness of judicial equity.

I oppose **S.B. 240** until the Legislature creates a fair judicial election system.

GALLEGOS

SENATE BILL 95 ON SECOND READING

Senator West moved that the regular order of business, Senate Rule 7.13, and Section 5 of Article III of the State Constitution be suspended and that **S.B. 95** be taken up for consideration at this time:

S.B. 95, Relating to the recall of an elected official in a general-law municipality.

The motion prevailed by the following vote: Yeas 30, Nays 0.

Absent-excused: Sims.

The bill was read second time.

Senator West offered the following committee amendment to the bill:

Committee Amendment No. 1

Amend **S.B. 95** as follows:

(1) On page 2, line 11 (SECTION 1, Sec. 27.023(a)) delete the words "15 percent" and substitute the words "25 percent".

(2) On page 2, lines 15 and 16 (SECTION 1, Sec. 27.023(a)), delete the words "by all candidates for governor in the most recent gubernatorial election" and substitute the words "by all candidates for mayor in the most recent municipal election".

(3) On page 7, between lines 10 and 11, add a new SECTION 2 to read as follows and renumber subsequent sections accordingly:

"SECTION 2. Section 21.002, Local Government Code, is repealed."

The committee amendment was read and was adopted by a viva voce vote.

Senator Shapiro offered the following amendment to the bill:

Floor Amendment No. 1

Amend **S.B. 95** in SECTION 1, Subchapter D, by deleting Sec. 27.061(a) and substituting the following:

"Sec. 27.061. ELECTION ORDER; DATE. (a) A recall election shall be ordered at the next regularly scheduled meeting of the municipal governing body that occurs after notice has been given to the officer under Sec. 27.045."

The amendment was read and was adopted by a viva voce vote.

The bill as amended was passed to engrossment by a viva voce vote.

SENATE BILL 95 ON THIRD READING

Senator West moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **S.B. 95** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 30, Nays 0.

Absent-excused: Sims.

The bill was read third time and was passed by a viva voce vote.

SENATE BILL 99 ON SECOND READING

Senator West moved that the regular order of business, Senate Rule 7.13, and Section 5 of Article III of the State Constitution be suspended and that **S.B. 99** be taken up for consideration at this time:

S.B. 99, Relating to construction change orders.

The motion prevailed by the following vote: Yeas 30, Nays 0.

Absent-excused: Sims.

The bill was read second time and was passed to engrossment by a viva voce vote.

SENATE BILL 99 ON THIRD READING

Senator West moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **S.B. 99** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 30, Nays 0.

Absent-excused: Sims.

The bill was read third time and was passed by a viva voce vote.

**COMMITTEE SUBSTITUTE
SENATE CONCURRENT RESOLUTION 3
ON SECOND READING**

On motion of Senator West and by unanimous consent, the regular order of business, Senate Rule 7.13, and Section 5 of Article III of the State Constitution were suspended to consider at this time on its second reading:

C.S.S.C.R. 3, Encouraging the community justice assistance division of the Texas Department of Criminal Justice and the Texas Council on Family Violence to issue a directive that local community supervision and correctional departments work with battering intervention and prevention programs.

The resolution was read second time and was adopted by a viva voce vote.

NOTICE OF CONSIDERATION OF NOMINATIONS

Senator Bivins gave notice that he would on Monday, February 6, 1995, at the conclusion of morning call submit to the Senate for consideration nominations to agencies, boards, and commissions of the state.

MEMORIAL RESOLUTION

S.R. 135 - By Gallegos: In memory of Leroy Ferguson of Harris County.

CONGRATULATORY RESOLUTIONS

S.R. 136 - By Cain: Congratulating Lowell Newman on being named a "Texas Farm Bureau Pioneer" for 1994.

S.R. 137 - By Cain: Congratulating the Reverend and Mrs. Clem Sullivan of Quitman on the occasion of their 71st wedding anniversary.

S.R. 138 - By Cain: Congratulating Mr. and Mrs. Joe Rabb on the occasion of their 50th wedding anniversary.

S.R. 139 - By Cain: Congratulating Mr. and Mrs. James Tarver on the occasion of their 50th wedding anniversary.

S.R. 140 - By Cain: Congratulating Mr. and Mrs. Ernie Thorp on the occasion of their 60th wedding anniversary.

S.R. 141 - By Henderson: Congratulating Mark William Price on achieving the rank of Eagle Scout.

S.R. 142 - By Henderson: Congratulating Jason L. Carter of Houston on achieving the rank of Eagle Scout.

S.R. 143 - By Barrientos: Congratulating Emmett Shelton, Sr., on the occasion of his 90th birthday and Emmett Shelton, Jr., on the occasion of his 64th birthday.

ADJOURNMENT

On motion of Senator Truan, the Senate at 11:12 a.m. adjourned until 11:00 a.m. Monday, February 6, 1995.

APPENDIX

REPORT OF STANDING COMMITTEE

The following committee report was received by the Secretary of the Senate:

February 2, 1995

HEALTH AND HUMAN SERVICES — C.S.S.B. 158